FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3849 OF 2005

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.S.Malik for the applicant.

Mr.A.S.Shitole APP for the State.

Coram : R.S.Mohite,J

Date : 24.2.2006.

PC

1. This is an application impugning an order dated 16.4.2005 passed by the Addl. Metropolitan Magistrate, 19th Court, Esplanade, rejecting an application made by the applicant seeking permission to join the trial and the framing of charge while claiming general exemption until further orders. It appears that this is a police case in which the police have filed a charge-sheet contending that the applicant and his brother are guilty of an offence of Section 406 of IPC. The present applicant is a resident of

Hong-kong and police are unable to interrogate him due to his absence. The charge-sheet has been filed saying that the present applicant is absconding. Even assuming that he is not absconding, he is not available for investigation. As far as trial is concerned, he will have to first surrender before the trial Court and the trial Court must consider the question of grant of bail and the question of allowing him to leave the country on the merits of the case and if on merits, the trial Court grants him bail or permit him to leave the country, then the trial Court is also required to impose the terms and conditions for passing such orders. The reason is that ultimately in case there is any conviction, the applicant must be available for further procedures of law. In the circumstances, there is no substance in the application and the application is rejected. However, if and when the applicant surrenders and is

granted bail, he will be at liberty to apply for further exemption and if any such application is made, the same will be considered afresh by the Court without being in any way influenced by the earlier order of rejection. With this direction application is disposed of and the interim stay granted earlier, is vacated. If the applicant returns to Mumbai for the purpose of surrendering before the Magistrate by 10th of March 2006 and in fact surrenders before the Magistrate by 10th of March 2006, then the Magistrate shall grant him interim bail on such terms and conditions as he deems fit. It is made clear that the bail application if made, will be decided on the merits of the case. The matter be listed before the trial Court on 10th March 2006. The Advocate for the applicant states that his client will return from Hong-kong and present himself before the Court on 10th March 2006. The statement is accepted. If he surrenders

before the Magistrate on 10th March 2006 then on his undertaking to be given to the Magistrate that he will not leave the country and on such other terms & conditions as the Magistrate thinks proper, he may not be arrested before his application is decided.

(R.S.Mohite,J)